

GREG HEIDEMANN

IBLA 97-496

Decided April 10, 1998

Appeal from a decision of the Shoshone, Idaho Falls, and Burley Districts, Bureau of Land Management, Idaho, assessing damages for fire suppression. IDI-020-2965.

Set aside and referred to the Hearings Division.

1. Trespass: Generally

Under 43 C.F.R. § 9239.0-7 and 43 C.F.R. § 9239.1-3(a) the burning of public lands is an act of trespass for which fire suppression and related administrative costs may properly be assessed as damages against the trespasser. However, where the individual assessed in trespass disputes that BLM's fire suppression efforts were necessary because the fire was "contained" or "out" when BLM arrived on the scene, a question of fact is raised which should be resolved at an evidentiary hearing.

APPEARANCES: Greg Heidemann pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Greg Heidemann has appealed from an assessment of damages, including fire suppression and administrative costs totaling \$5,115.25, billed to him by the Shoshone, Idaho Falls, and Burley District Office, Bureau of Land Management (BLM), Idaho. On February 28, 1996, BLM served Heidemann with a bill for collection assessing \$4,334.96 in fire suppression costs and \$780.29 in administrative costs incurred with respect to the August 31, 1995, "Emery Fire" at a location given in BLM's Incident Report as "1300S and 1000W of Burley, Idaho."

On October 13, 1995, BLM issued Heidemann a Notice of Suspected Trespass. The BLM stated therein that an August 31, 1995, examination of public land near Cottonwood Creek indicated that Heidemann "may be responsible for burning public land without authorization." The BLM allowed Heidemann 21 days from receipt of the Notice to show that he was not responsible for the burning of the land. The file does not indicate that Heidemann responded to BLM's Notice.

The BLM's Incident Report contains the following narrative:

On 8-31-95 at 1730 hours David Smith's IA Unit was dispatched to a fire at 1300S and 1000E of Burley, Idaho. The IA Unit arrived at the fire at 1750. The fire was burning in grass on flat ground. There was active flame on the south end of the fire. Two tractors with discs were working on the west and the east flank. The south flank was a gravel road and the north flank was a green hay field. Jeff Bedke's IA arrived at 1805. The heavy engines worked the perimeter of the fire. The refill was staged on a road east of the fire. One patrol unit (Emery) arrived at 1900 and checked the perimeter of the stubble field. The fire was contained at 2000 hours and controlled at 2030 hours. Emery and the refill engine was released at 2100. All remaining engines left the field at 2130. Fire F405 was declared out on 8-31-95.

The Incident Report also contains the following statements: "The cause of the fire was a stubble field burning. David Smith took a statement from Greg Heidemann: 'I was burning stubble and it got away from us.'"

The file contains a billing worksheet indicating how BLM arrived at its assessment. Fire suppression costs included salaries for fire fighters and support personnel, vehicle mileage use and rate, and laundry of personal protective equipment. Administrative costs were calculated at an 18-percent rate of the amount of the fire suppression costs. This percentage rate, according to the worksheet, is "supported by the Denver Regional Solicitor."

On appeal to this Board, Heidemann states in pertinent part:

After the start of the fire, myself and Mel Tipton (Wolverton Farms) fully contained the fire by discing around the burning area with our farm discs (pulled by our tractors). After the area was contained we continued to circle the outer areas to ensure the fire was out.

Four men from the BLM fire fighting crew arrived after this containment. We feel their services were unnecessary and wasteful on their part. We did not personally request their assistance because the fire was already extinguished. For these reasons we feel it was not our fault that the costs shown on your billing were incurred.

[1] The regulation at 43 C.F.R. § 9239.0-7 defines the "injury" of "vegetative materials" on the public lands as an act of trespass. The measure of damages for such a trespass includes administrative costs and costs "associated with the rehabilitation and stabilization of any resources damaged as a result of the trespass." 43 C.F.R. § 9239.1-3(a).

A trespasser must either "rehabilitate" lands harmed by the trespass or pay the costs incurred by the United States in doing so. 43 C.F.R. § 2801.3(b)(3).

While Heidemann filed no information denying his responsibility for the fire, he does, on appeal, dispute the necessity of BLM's deployment of fire suppression efforts. Heidemann alleges that the fire was "contained" and "out" when BLM crews arrived on the scene. The BLM has not responded to these allegations which are in conflict with the narrative in its incident report. In such a case, the Board will refer the case to the Hearings Division under 43 C.F.R. § 4.415 for a hearing. Jules Wright, 137 IBLA 313, 316 (1997). The administrative law judge assigned to the case shall issue a decision which will be final for the Department in the absence of a timely appeal to this Board.

Further, at the hearing in this matter, the Government will have the burden of going forward with evidence in support of the trespass and of the costs included in the Bill for Collection. The Government shall also have the ultimate burden of persuasion in this case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is set aside and the case is referred to the Hearings Division for action consistent with this Decision.

James P. Terry
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge